E. . A. asks the Utah Labor Commission to review Administrative Law Judge George's dismissal of Mr. Astin's claim for permanent partial disability compensation under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

Mr. A injured his back while working for Astin-Weight on January 17, 1995. Astin-Weight and its insurance carrier, Workers Compensation Fund (referred to jointly as "Astin-Weight" hereafter), accepted liability under the Utah Workers' Compensation Act and paid Mr. A. medical expenses. Mr. A. did not seek disability compensation until November 20, 2001, when he filed an application for hearing with the Commission.

Astin-Weight moved to dismiss Mr. A. application because it was not filed within six years of his accident, as purportedly required by the Act. Judge George agreed and dismissed the application. Mr. A. now challenges Judge George's decision as a misapplication of the Act.

DISCUSSION AND CONCLUSION OF LAW

The facts material to resolution of this matter are set forth above and are not in dispute. The question before the Commission is whether the Act bars Mr. A. claim for permanent partial disability compensation because no application was filed within six years from the date of his accident.

The first question is what version of the Act applies to the foregoing issue. Judge George applied § 35-1-98(2) of the Act as it stood on January 17, 1995, the date of Mr. A. accident. However, § 35-1-98(2) was renumbered as §34A-2-417(2) on July 1, 1997, and was further amended effective May 3, 1999. As a general rule, statutory changes are not applied retroactively. However, statutory changes that are purely procedural, such as amendments to statutes of limitation, are applied retroactively. Section 35-1-98(2) [later renumbered as § 34A-2-417(2)] is a statute of limitations and, as such, is procedural in nature. Consequently, the version of § 34A-2-417(2) in effect at the time Mr. A. filed his application must be applied retroactively to the adjudication of Mr. A. claim.

Section 417(2) provides, in material part, that a claim for permanent partial disability compensation "is barred, unless the employee . . . files application for hearing with the Division of Adjudication no later than six years from the date of the accident . . . ." Judge George concluded that §417(2)'s requirement for filing an application for hearing could only be satisfied by the filing of a particular document, namely, the Commission's Form 001—Application For Hearing. The Utah Supreme Court considered, but rejected, similar reasoning in Vigos v. Mountainland Builders, 993 P.2d 207 (Utah 2000). In Vigos, Justices Stewart and Durham concluded that the "application for

hearing" requirement was satisfied by filing an initial report of injury, coupled with the employer/insurance carrier's acceptance of the claim and payment of benefits. In a concurring opinion, Justice Russon concluded that an employer/insurance carrier who accepts liability on a claim without requiring that the claimant file an application for hearing is thereafter estopped from raising §417(2)'s six-year statute of limitations as a defense against claims for additional benefits.

The same operative facts are present with respect to Mr. A. claim as were present in Vigos. Commission records establish that an Employers' First Report of Injury and Physicians' First Report of Injury were filed at the time of injury. Astin-Weight accepted liability for Mr. A. claim and paid workers' compensation medical benefits. With these facts, and under the logic of either the lead or concurring opinion in Vigos, Mr. A. has satisfied the "application for hearing" requirement of § 417(2).

The Commission notes Astin-Weight's argument that Vigos dealt with a claim for permanent total disability compensation, whereas Mr. A. claim is for permanent partial disability compensation. The Commission views that distinction as immaterial under the reasoning of the lead opinion or concurring opinion in Vigos.

In summary, the Commission concludes that under the facts of this case, § 417(2) does not bar Mr. A. current claim for permanent partial disability compensation and that the Commission has jurisdiction to consider the merits of Mr. A. claim.

ORDER

The Commission grants Mr. A. motion for review, sets aside Judge George's previous decision and remands Mr. A. claim to Judge George for such additional proceedings as are necessary to resolve the claim. It is so ordered.

Dated this 29th day of April, 2004.

R. Lee Ellertson, Commissioner